

PLANNED DEVELOPMENT PERMIT

FILE NO.	PD13-047
LOCATION OF PROPERTY	Northeast corner of South De Anza Boulevard and Via Vico (1090 South De Anza Boulevard)
ZONING DISTRICT	CP(PD) Planned Development
GENERAL PLAN DESIGNATION	Neighborhood/Community Commercial
PROPOSED USE	Planned Development Permit request to replace an existing gasoline service station with a new approximately 2,929 square foot retail store (convenience store) on a 0.61 gross acre site consisting of an existing carwash structure.
ENVIRONMENTAL STATUS	Exempt
OWNER/ADDRESS	James J Rubnitz 17610 Blanchard Drive Monte Sereno, CA. 95030
APPLICANT/ADDRESS	Henry Cord Cord Associates 42 South First Street, Suite D San Jose, CA. 95113

FACTS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Neighborhood/Community Commercial on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The site is zoned CP(PD) Planned Development, established by Ordinance No. 29341 and allows for the development of retail use (convenience store) on the subject site with approval of a Planned Development Permit.
3. The 0.61 gross acre site is located on the north-east corner of South De Anza Boulevard and Via Vico (1090 South De Anza Boulevard).
4. On December 2, 2013, Henry Cord, from Cord Associates, on behalf of James E. Rubnitz, applied for a Planned Development Permit to replace an existing gasoline service station with a new approximately 2,929 square foot retail store (convenience store).
5. The subject property is currently zoned CP (PD), (File Number PDC13-022) to allow a retail use (convenience store) and remove an existing gas station use on the subject site. The previously approved Rezoning (File Number PDC73-1-33) limited the use of the subject site to car-wash and gas station uses.

6. The existing car-wash structure along the north property line will be retained. No changes are proposed to this structure.
7. The gas station use that is proposed to be removed from the southern half will be replaced by the new retail use.
8. A PD Permit (PD73-6-33) was approved to effectuate the Planned Development Zoning with the addition of a car-wash to a gas station use on the subject site. A subsequent PD Permit (PD86-043) was obtained for driveway improvements on July 28, 1983.
9. The proposed project shall conform to the development regulations set forth in the Planned Development Zoning, PDC13-022.
10. Existing commercial and retail uses with associated parking lots are located to the immediate north and east of the subject site, to the south across Via Vico, and west across South De Anza Boulevard.
11. The nearest residentially zoned uses are located to the east and south-east of the subject site on Via Vico, at approximate distances of 190 feet and 81 feet respectively when measured from the southeastern corner of the subject site.
12. The proposed project will provide new architectural finishes to integrate the existing and new structures, and provide peripheral landscaping to upgrade the appearance of the subject site.
13. Under the provisions of Section 15301(e)(2) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, in that there is no possibility that the activity in question may have a significant effect on the environment. This Section exempts the construction of up to 10,000 square feet in urbanized areas.

FINDINGS

1. The Planned Development Permit, as issued, furthers the policies of the General Plan, in that:
 - a. The project maintains the existing building type and pattern along South De Anza Boulevard.
 - b. Architectural details to enhance the frontage along South De Anza Boulevard have been integrated into the design.
 - c. The building scale does not conflict with the surrounding neighborhood.
2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property in that:
 - a. The proposed project conforms to the approved General Development Plan.
3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious, in that:
 - a. The architectural elements of the proposed project and the existing buildings are integrated into a harmonious whole.
 - b. The project conforms to the Commercial Design Guidelines.

4. Under the provisions of Section 15301(e)(2) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, in that there is no possibility that the activity in question may have a significant effect on the environment. This Section exempts the construction of up to 10,000 square feet in urbanized areas.
5. Further, the Director of Planning concludes and finds, based on the analysis of the above facts, that:
 - a. The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.
 - b. The proposed project is in conformance with the California Environmental Quality Act.
 - c. The benefits of permitting the demolition, removal or relocation of the subject buildings outweigh the impacts of the demolition, removal or relocation.
6. Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Section 20.80.440(B) and Chapter 20.100 of the San José Municipal Code, the replacement of an existing gasoline service station with a new approximately 2,929 square foot retail store (convenience store).

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Carwash and Convenience Store Addition" dated April 26, 2013, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Conformance with Previously Approved Zoning.** All conditions of approval and required environmental mitigation measures from the previously approved Planned Development Zoning (File No. PDC13-022) remain in effect.
7. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
8. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
9. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
10. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
11. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
12. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
13. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
14. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.

15. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
16. **Building and Property Maintenance.** The property owner shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
17. **Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
18. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set (see Permit Adjustment Required condition below).
19. **Fence Standards.** Existing perimeter fences shall be repaired and maintained by the developer and/or property owner in accordance with the standards established on the approved plan set.
20. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of territory not covered by the permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.
21. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. If permanent irrigation is to be installed, it must be in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
22. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San Jose Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
23. **Construction Impact Mitigation Measures.** The applicant is responsible for notifying all contractors of the conditions of this permit and that they shall perform construction activities in compliance with these conditions, or be subject to enforcement action.
 - a. *Compliance.* The applicant shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the applicant, their contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City. These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
 - b. *Construction Hours.* Construction and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel. The construction hours shall be printed on all plans for the project used to construct the project. Interior construction activities that do not generate any audible noise impacts at residential properties are allowed on Saturdays and Sundays between 9:00 a.m. and 5:00 p.m.

- c. *Enforcement.* The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of Noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.
- d. *Construction Deliveries.* Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
- e. *Fencing.* The site shall be wholly enclosed by security fencing where the site is accessible by vehicles. The gates to the project site shall remain locked during all other times, except for a 30-minute period immediately preceding and following the above hours of construction.
- f. *Assembly Area.* Workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
- g. *Disturbance Coordinator.* A Construction/Disturbance coordinator shall be identified by the developer for this project. The Construction/Disturbance coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also coordinate information regarding construction phasing/operations and keep the neighborhood informed of the stages of development. The coordinator shall also listen and respond to neighborhood concerns regarding construction, determine the cause of the concern (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem.
- h. *Telephone Number.* A phone with answering machine for non-work hours shall be maintained during the duration of project construction. The phone number should be a local call for surrounding residents.
- i. *Posting.* The name and phone number of the Construction/Disturbance coordinator, the hours of construction limitations, City File Number PD07-065, City contact and phone number (department and phone number), shall be displayed on a weatherproof sign posted at each entrance to the project site.
- j. *Street Cleaning and Dust Control.* During construction, the developer shall damp-sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
- k. *Construction Watering.* The proposed project shall use recycled water for all grading, dust control, and other non-potable approved uses during construction to the satisfaction of the Director of Public Works.

24. **Cultural Resources.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
25. **Construction Noise.** The following mitigation measures shall be implemented for construction activities wherever there is a direct view from existing residences adjacent to the site, or where construction occurs within 500 feet of a residential area.
- a. *Construction Noise.*
 - i. Contractors shall be required to use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used at the project site, as well as at off-site locations with project construction, shall be equipped with adequate muffling devices. All equipment shall be in good mechanical condition, to minimize noise created by faulty or poorly maintained engine, drive-train and other components.
 - ii. The contractor shall schedule on-site and off-site construction activities in shifts to avoid high noise levels caused by simultaneously operating several pieces of noise-generating equipment.
 - iii. Temporary berms or noise barriers, such as lumber, or other material stockpiles shall be installed during construction activities.
 - iv. The following equipment shall be used during construction
 - 1) Earth Removal: Use scrapers as much as possible for earth removal, rather than the noisier loaders and hauling trucks.
 - 2) Backfilling: Use a backhoe for backfilling, as it is less costly and quieter than either noisier bulldozers or loaders.
 - 3) Ground Preparation: Use a motor grader rather than a bulldozer for final grading.
 - 4) Building Construction: Power saws should be shielded or enclosed where practical to decrease noise emissions. Nail guns should be used where possible, as they are less noisy than manual hammering.
26. **Air Quality.** During construction, the following measures shall be incorporated to mitigate any possible significant air quality impacts.
- a. Water all active construction areas at least twice daily.
 - b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
 - c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
 - d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging

- e. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.

27. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Final Tract Map by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.

- a. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. The Minor Improvement Permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
- b. **Transportation:** The current gasoline station, car wash, and convenience store generate approximately 80 AM and 107 PM peak hour trips. The project (an existing car wash and a new convenience store) proposes to generate 91 AM and 101 PM peak hours. The traffic generated by this project will not affect the level of service at the surrounding intersections. We conclude that the subject property will be in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts.
- c. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4' foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2010 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10 year storm event.
 - iii. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit.
- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.

- e. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
 - f. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for zone D.
 - g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - h. **Undergrounding:** South De Anza Boulevard is part of an undergrounding district and is subject to The In Lieu Undergrounding fee which shall be paid to the City as a project condition. However, this project proposes no significant intensification; therefore no In Lieu Undergrounding fees will be due.
 - i. **Street Improvements:**
 - i. Construct new 10' sidewalk along S. De Anza Blv and Via Vico. A 3' dedication will be required.
 - ii. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - iii. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
 - v. Install handicap ramp at the north-east corner of S. De Anza Blvd. and Via Vinco to current ADA and city standards.
 - vi. Remove and replace existing driveways to meet current CSJ and ADA standards. Driveway along S. De Anza Blvd. to be 32-feet wide and the driveway along Via Vinco to be 26-feet wide.
 - vii. Close one existing driveway along Via Vinco.
 - j. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
28. **Storm Water Stenciling.** All drain inlets shall be labeled "No Dumping—Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.
29. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.

30. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this 5th day of March, 2014.

David Sykes, Interim Director
Planning, Building, and Code Enforcement

Deputy